STATE OF MICHIGAN

COURT OF APPEALS

UNPUBLISHED
June 16, 2011

In the Matter of C. M. G. COBERN-FARR, Minor.

No. 301961
Jackson Circuit Court
Family Division
LC No. 04-001993-NA

Before: MURRAY, P.J., and HOEKSTRA and STEPHENS, JJ.

PER CURIAM.

Respondent appeals as of right the trial court's order terminating her parental rights to the minor child pursuant to MCL 712A.19b(3)(c)(*i*), (g), (i), and (j). We affirm.

Based on a review of the record, the trial court did not clearly err in finding that clear and convincing evidence supported termination of respondent's parental rights under the multiple statutory grounds cited by the court. MCR 3.977(K); *In re Trejo Minors*, 462 Mich 341, 355-357; 612 NW2d 407 (2000).

The evidence established that in 2007 respondent's parental rights to five children were involuntarily terminated due to neglect and domestic violence.[1] After the termination, respondent maintained a relationship with her boyfriend T. Farr, the father of two of the children, and became pregnant with the minor child. The child was in respondent's care for a week after his birth when he was removed and placed in protective custody. After the removal, the domestic violence between respondent and Farr continued. Respondent eventually ended her relationship with Farr, but only two months later married one of his friends, J. Vribes. Vribes had a criminal history and was on parole at the time respondent married him. Respondent's relationship with Vribes was unstable. They were frequently observed arguing before visitation with the minor child. There was also evidence that they argued in the courthouse before hearings. Respondent and Vribes were evicted from their trailer because of uncleanliness and their perpetual arguing. Photographs of respondent's home were admitted into evidence; the

[1] This Court affirmed the trial court's termination of respondent's parental rights to these children. *In re Cobern/Cathey/Farr Minors*, unpublished opinion per curiam of the Court of Appeals, issued May 20, 2008 (Docket No. 281779.)

photographs depicted clutter and disarray along with what appears to be dog feces on the floor. Vribes was offered counseling services that ended unsuccessfully because the counselor did not feel safe alone with Vribes in her office.

Despite respondent being offered a multitude of services, there was clear and convincing evidence that at the time of the termination hearing respondent was in no better position to parent the minor child than when he was removed from her care. Indeed, respondent had not improved in the six years she had been involved with Children's Protective Services. Moreover, it was unlikely that respondent would make progress in the foreseeable future. Psychologist Van Goethem had a unique opportunity to evaluate respondent in 2005 and in 2010. He noted that respondent had made no progress in the years that elapsed between the evaluations. Furthermore, he opined that, in the event of reunification, respondent would require close and ongoing supervision for a long period of time.

Based upon this evidence, the trial court correctly found that termination of respondent's parental rights to the minor child was supported by MCL 712A.19b(3)(c)(*i*), (g), (i), and (j).

We reject respondent's argument that the doctrine of res judicata barred termination of her parental rights pursuant to MCL 712A.19b(3)(i). Respondent notes that the original petition requested termination of parental rights pursuant to MCL 712A.19b(3)(i). At the initial dispositional hearing, the court denied petitioner's request to terminate parental rights and, instead, granted respondent additional time to work toward reunification. Respondent contends that the doctrine of res judicata barred the court from subsequently terminating her parental rights based on a finding that she had previously lost her parental rights to five other children.

In *In re Pardee*, 190 Mich App 243, 248-250; 475 NW2d 870 (1991), this Court held that res judicata did not bar an order terminating a father's parental rights, even though the petitioner relied in part on facts that predated a prior order denying termination. The Court considered that the petitioner also relied on circumstances that were new and different from the grounds raised in the first petition. The Court stressed that the unique concerns in parental rights cases militate against an overly rigid application of the res judicata doctrine:

> We recognize that respondent has a significant interest in protecting himself from repeated vexatious or unnecessary relitigation of issues which the doctrine of res judicata is designed to prevent. Nevertheless, this doctrine cannot settle the question of a child's welfare for all time, nor prevent a court from determining at a subsequent time what is in the child's best interest at that time. Moreover, res judicata should not be a bar to "fresh litigation" of issues that are appropriately the subject of periodic redetermination as is the case with termination proceedings where new facts and changed circumstance alter the status quo. [Id. at 248-249 (citations omitted).]

The Court further noted that "when the facts have changed or new facts develop, the dismissal of a prior termination proceeding will not operate as a bar to a subsequent termination proceeding." *Id.* at 248.

A thorough review of the record reveals that the facts and issues litigated at the initial dispositional hearing were not identical to those at the termination hearing ten months later. After the trial court denied the initial petition, respondent continued to receive services. Despite these services, she continued to have volatile relationships and was unable to maintain a home in a condition fit for a child and free of filth and clutter. Therefore, the termination order was not based on evidence identical to that presented at the initial disposition, but was properly based on facts both existing before the first hearing and arising afterward. Accordingly, the doctrine of res judicata did not prevent the court from relying on facts existing before it dismissed the first petition in this case, i.e., the termination of respondent's parental rights to five other children.

Finally, we conclude that the trial court did not clearly err when it found that termination of parental rights was in the minor child's best interests. MCL 712A.19b(5); *In re Trejo Minors*, 462 Mich at 356-357. At the time of the termination hearing, respondent was not in a position to parent the child or to provide a stable and permanent home for him. There was no indication that respondent would be able to do so within a reasonable time. Indeed, respondent had been provided six years of services and, as noted by the psychologist, had made no progress during that time. The child was young enough that he would benefit from a stable and permanent environment, which could only be achieved through termination of respondent's parental rights.

Affirmed.

/s/ Christopher M. Murray
/s/ Joel P. Hoekstra
/s/ Cynthia Diane Stephens